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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

LIPE HENSLEE, Individually, Now Residing in Davidson County, Tennessee, Collector of Internal Revenue, District of Tennessee,

Petitioner,

vs.

UNION PLANTERS NATIONAL BANK & TRUST COMPANY, a National Bank At Memphis, Tennessee, and WILBURN K. NOELL, a Resident Citizen of Memphis, Tennessee, Executors of Estate of William Bate Williams,

Respondents.

No. 90

BRIEF OF RESPONDENTS ON WRIT OF CERTIORARI.

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ADDITIONAL STATEMENT.

The statement of facts set out in the original brief is complete as far as it goes, but it has left out several highly important facts which bear directly on the question here involved and, we, therefore, wish to make this additional statement.

William Bate Williams died in the City of Memphis on the 22nd day of July, 1943, leaving by will dated 27th of March, 1942, his entire estate in trust for his mother. His will directed the executors and trustees to pay her for life the sum of $750.00 a month, which was about one-half of the net income of the estate. His mother at the time of his death was eighty-five years old, with fixed and regular habits. The gross value of the estate was $508,511.00, which was reduced to $426,899.00 as the result of various expenses. His mother had an independent estate of about $100,000.00, which yielded her a net income of between $200.00 and $300.00 a month. She had no dependents or close relatives whatsoever. On June 15th, 1945, she purchased for $30,000.00 cash from the executors a building located at 45 Union Avenue in the City of Memphis. She owned her own home in the City of Memphis, Tennessee and likewise a summer home at Monteagle, Tennessee. It further appears that her personal expenditures were moderate and that she did not spend the $750.00 a month paid her under the will, (R. 4) but saved a part of it for her own estate.

The executors at the date of the mother's death had on hand excess income of approximately $18,000.00. No demands were ever made on the executors in excess of the $750.00 a month.

We call the Court's very particular attention to the fact that the testator had full knowledge of his income and of how much his estate would produce after his death. He did not give the entire income to his mother, as he plainly recognized that $750.00 a month was more than ample to take care of all of her needs, necessities and pleasures. The respondents allege that every single fact

set out in the complaint was readily ascertainable by the executors upon their appointment. If the executors did not know they could have readily ascertained that the testator's mother was eighty-five years old, of simple habits, was well provided for as to her dwellings by a home in Memphis and a summer home in Monteagle; that she had a substantial income of her own and always lived a plain and simple life; that her style of living, her comfort and her pleasures were easily ascertained and predictable. Any reasonable man, and these executors were that, would know beyond a doubt the manner in which the testator's mother would live and conduct herself after her son's death. She was too old to change her fixed habits of a lifetime, either as to her pleasures, comforts or welfare.

QUESTION INVOLVED.

There is only one question involved in this appeal and that is whether or not the Court of Appeals for the Sixth Circuit followed the decisions of this Court and in reality laid down and carried out the sound rule of law and the proper test to be used in ascertaining whether or not the amount of the charitable remainder of this estate was "presently ascertainable" under the terms of the will and the surrounding circumstances so as to be deductible for estate tax purposes under Section 812 (d) of the Internal Revenue Code and the applicable Treasury Regulations.

SYNOPSIS OF THE ARGUMENT.

The testator in this case lived with his mother, eighty-five years of age, neither of whom had any close relatives, and left in trust for her his entire estate with directions to his executors and trustees to pay her the sum

of $750.00 a month, which was about one-half the income of an estate with a net value of $426,899.00. The will did not leave anything directly to his mother, but granted the trustees within "their discretion" the right to invade the income or corpus of the estate for her pleasure, comfort and welfare.

The first proposition advanced in the respondents' brief is that the will when properly construed sets up a reasonable standard for measuring the charitable bequest in that the income to the life beneficiary who was eighty-five years of age, was manifestly sufficient and that there was still left a surplus of approximately $750.00 a month, which did in fact accrue and become a part of the general estate. The test laid down in the case of

Ithaca Trust Co. v. U. S., 270 U. S. 151

is proper, and the test laid down by the Court of Appeals in this case follows the Ithaca case and is not in anywise contrary to the rule laid down in the

Merchants Bank v. Commissioner, 320 U. S. 256.

The provisions of the will are not so vague and uncertain that the value of the charitable bequest is not "presently ascertainable." The position of the respondents is that the provisions of this will must be examined and that the facts and circumstances surrounding the testator, his executors and trustees and his mother, the life beneficiary, are pertinent and should be examined in order to determine whether the possibility of an invasion of the corpus is so remote as to be nil. All of the facts and circumstances in this case show beyond a doubt that there was never any possibility of invading the corpus of this estate and that therefore the possibility of invasion was nil.

The further proposition is advanced that the discretion of these trustees must be exercised in a proper and reasonable manner and that no invasion or demand by the life beneficiary of a capricious nature would be allowed under the discretion vested in the trustees. It is the duty of the trustees not only to protect the life beneficiary but likewise the remaindermen and charities in the residuary clause. The law does not allow a trustee to favor either class and this legal principal would so limit the right of the trustees to invade this estate under the facts and circumstances as to render such invasion so remote as to be a nullity. The legal principal, therefore, involved prevents the trustees from yielding to an extravagant or capricious demand from the life beneficiary. There is no reason why, under the terms of this will, the facts and circumstances surrounding the testator and the life beneficiary cannot be carefully examined in order to determine the possibility of an invasion. The rule advanced by the petitioner is technical and prevents the carrying out of the legitimate intent of Congress to foster and promote charitable bequests.

The wording of this will, the amount of the estate, the limited amount given to the life beneficiary, her age, character and mode of living are all such that if these facts are clearly established then the possibility of an invasion of the corpus of the estate is so remote as to be nil. The intent of Congress was to encourage charitable bequests and should be carried out and not limited by technical requirements. There is nothing in the Treasury Regulation or in the Merchants National Bank case which limits the inquiry into all the facts. It is, therefore, asked that the judgment of the Court of Appeals be affirmed.

ARGUMENT.

The brief of the petitioner in its "Specifications of Errors to be Urged" on page six makes the statement that the Court of Appeals held that the charitable bequests were deductible if the prospect of the invasion of the charitable bequest was "remote." The Court of Appeals did not hold this. It held as follows:

> "We think that the case requires a trial upon appropriate issues made up by the pleadings. We do not decide that appellants are entitled to recover, because that question is not before us. If, upon remand and trial the court should determine that appellants have not made out their case by the weight of the evidence, judgment for appellee would be indicated; but if the court should find that at the time of testator's death there was nothing more than a bare possibility, i. e., a possibility so remote as to be negligible that the charitable bequests would fail, judgment for appellants would follow. Commissioner v. Upjohn's Estate, 124 Fed. (2d) 73, 76, (C.C.A. 6); Commissioner v. F. G. Bonfils Trust, 115 Fed. (2d) 788, 793 (C.C.A. 10); Commissioner v. Robertson's Estate, 141 Fed. (2d) 855, 858 (C.C.A. 4). The Robertson case cited and discussed the Merchants Bank case."

The distinction between the prospects of a remote invasion and the prospect of an invasion "so remote as to be negligible" is plain and manifest and needs no further presentation.

The testator, of course, knew his mother, her habits and above all her character. He, of course, had no close relatives and was primarily concerned with his old mother. Knowing all this, he left her ample provision, but did not leave her anything absolutely, or even the whole income from his estate.

In presenting its case the petitioner in substance takes the position that under the terms of this will no extraneous facts or circumstances can be considered at all. The brief takes the theory that the question of whether the charitable bequests can be deducted is governed solely by the exact terms of the will, without regard to the facts which are absolutely necessary in order to determine what the will really means.

There are two principal and fundamental cases in this Court which lay down the broad rule of law which govern the right to deduct charitable bequests where there is a life estate created with a right to invade the corpus. The first case is

Ithaca Trust Company v. United States, 279 U. S. 151; 73 Law Ed. 647

where the rule is stated as follows:

> "On June 15, 1921, Edwin C. Stewart died, appointing his wife and the Ithaca Trust Company executors and the Ithaca Trust Company trustee of the trusts created by his will. He gave the residue of his estate to his wife for life with authority to use from the principal any sum 'that may be necessary to suitably maintain her in as much comfort as she now enjoys.' After the death of the wife there were bequests in trust for admitted charities. The case presents two questions, the first of which is whether the provision for the maintenance of the wife made the gifts to charity so uncertain that the deduction of the amount of those gifts from the gross estate under Section 403 (a) (3), supra, in order to ascertain the estate tax, connot be allowed. Humes v. United States, 276 U. S. 487, 494; 72 L. ed. 667, 670, 48 Sup. Ct. Rep. 347. This we are of opinion must be answered in the negative. The principal that could be used was only so much as might be necessary to continue the comfort then enjoyed. The standard

was fixed in fact and capable of being stated in definite terms of money. It was not left to the widow's discretion. The income of the estate at the death of the testator and even after debts and specific legacies had been paid was more than sufficient to maintain the widow as required. There was no uncertainty appreciably greater than the general uncertainty that attends human affairs."

Following the above case this matter was under consideration by this Court in the case of the

Merchants National Bank v. the Commissioner, 320 U. S. 256, 88 L. ed. 35

where the Court says:

"For a deduction under section 303 (a) (3) to be allowed, Congress and the Treasury require that a highly reliable appraisal of the amount the charity will receive be available, and made, at the death of the testator. Rough guesses, approximations, or even the relatively accurate valuations on which the market place might be willing to act are not sufficient. Cf. Humes v. United States, 276 U. S. 487, 494, 72 L. ed. 667, 670, 48 S. Ct. 347."

"Only where the conditions on which the extent of invasion of the corpus depends are fixed by reference to some readily ascertainable and reliably predictable facts do the amount which will be diverted from the charity and the present value of the bequest become adequately measurable. And, in these cases, the taxpayer has the burden of establishing that the amounts which will either be spent by the private beneficiary or reach the charity are thus accurately calculable. Cf. Bank of America Nat. Trust & Sav. Assoc. v. Commissioner of Internal Revenue, 126 F (2d) 48 (CCA 9th)."

It has always been the contention of the respondents that the test or rule laid down in these two cases is sub-

stantially the same, and the petitioner's brief at page 9 agrees with this proposition.

The Treasury Regulation, Section 81.44, set out in the petitioner's brief at page 3, states that where the bequest is "presently ascertainable" it is deductible.

Our position in this case is that under the terms of this will when properly construed and under the facts and circumstances surrounding the testator and the life beneficiary that the bequests to charity were presently ascertainable, and, therefore, should be deducted. The petitioner's entire brief is based on the proposition that the Merchant's Bank case, supra, laid down the absolute rule that a will of this character renders it impossible to ascertain the money value of charitable bequests because of the uncertainty of invasion without regard to the surrounding facts and circumstances. The will in the Merchants Bank case provided that the trustee was authorized to invade the corpus of the estate "in its sole discretion" and further shall exercise that discretion with liberality in favor of the wife. Likewise the entire income from the estate was given to the wife for her life. The present will does not authorize or allow the life beneficiary to invade the corpus of the estate at all. It directs that the estate be managed to suit the desires of the life beneficiary, but does not authorize an invasion of the corpus to gratify such desires. This clause is purely a clause controlling management. In addition, the trustees are authorized to invade the corpus within their *discretion*. There is nothing whatever said in the will about "sole discretion" or "absolute discretion," nor are the executors or trustees authorized or directed to do whatever the life beneficiary may desire.

The whole case presented in the petition is that the word "pleasure" as used in this will has created a condition of such uncertainty as to render the "presently ascertainable" value of the charitable bequests so vague as to prohibit or prevent their deduction.

We submit that the use of this mere word "pleasure" has not in substance changed the meaning of this will at all. How could anyone possibly conceive that a woman eighty-five years of age would change her fixed habits of a lifetime so as to make extraordinary demands or that the executors, or trustees would subject themselves to litigation, or to a surcharge by yielding to unreasonable demands. We agree with the petitioner that a bequest of a fund which might be applied to either charitable or non-charitable purposes is not deductbile. We insist, however, that the facts and circumstances surrounding this testator and his will must be examined in order to ascertain the probable or remote results of a clause authorizing an invasion of the corpus of the estate.

The second paragrph of Section 81.46 of the Treasury Regulations is set out at pages 3 and 4 of the petitioner's brief. However, in construing this regulation we submit that the entire section is pertinent. We are, therefore, setting it out in full:

> "Section 81.46 Conditional Bequests.—If as of the date of decedent's death the transfer to charity is dependent upon the performance of some act or the happening of a precedent event in order that it might become effective, no deduction is allowable unless the possibility that charity will not take is so remote as to be negligible. If an estate or interest has passed to or is vested in charity at the time of decedent's death and such right or interest would be defeated

by the performance of some act or the happening of some event which appeared to have been highly improbable at the time of decedent's death, the deduction is allowable.

If the legatee, devisee, donee, or trustee is empowered to divert the property or fund, in whole or in part to a use or purpose which would have rendered it, to the extent that it is subject to such power, not deductible had it been directly so bequeathed, devised, or given by the decedent, deduction will be limited to that portion, if any, of the property or fund which is exempt from an exercise of such power."

The first paragraph of the above section refers to conditional bequests and uses the words that if the charitable bequests would be defeated by a condition which it was so highly improbable would occur, then the bequest is deductible. This particular language shows that the real meaning of the Treasury Regulation is that surrounding facts and circumstances may be examined in ascertaining whether there is a bare possibility or one so remote as to be negligible that the corpus of an estate will be invaded. In judging this question we are compelled to ascertain the intention of the testator by reading his will as a whole, and then we are confronted with the proposition that the testator who knew the income of his estate, who knew his mother, her character, her habits and inclinations left her for life only about one-half the income of his estate. He knew and realized that this was all she would need, and, therefore, his language must be construed in view of these facts.

This testator was a bachelor, age sixty at date of death, and had lived with his mother during his lifetime. He knew the income of his estate at the time of his death and

safeguarded such income of his estate by directing and authorizing under Item IV of his will that his executors and trustees sell his real estate and tangible personal property within two years from his death and reinvest the proceeds in such securities as his executors and trustees deemed best. This, in substance, meant that the testator provided for a consistent and reliable income from his estate after death which he knew from experience would make available ample funds, without encroachment on the corpus of his estate, to pay his mother the sum of Seven Hundred Fifty ($750.00) Dollars a month plus any additional amounts, within the discretion of his executors and trustees, which might be necessary for her pleasure, comfort and welfare and to take care of and provide for her in such manner as she might desire. Such income from his estate for these purposes was calculable and ascertainable by this testator up to the date of his death and, therefore, was presently ascertainable to his executors and trustees, upon his death.

The power granted the trustees in this will is not a power of revocation and the simple answer to the entire argument advanced by the brief of petitioner along this line is that if the testator had intended his mother to have absolute control and disposition of the estate and uncontrolled right to invade it, he would have left it to her absolutely or would have so stated in his will. On the contrary he circumscribed and restricted her rights in the estate to a fixed sum each month which was about one-half of the income from the estate and the clause authorizing the invasion was sipmly to take care of emergencies and was never intended to constitute a right of revocation or an unlimited right of invasion. Besides limiting her right to one-half the income of the estate he

definitely limited her right of invasion to be governed by the sound discretion of the trustees.

There is a very clear distinction between the will set out in the Merchants Bank case and the will in this case, as we have pointed out above. We see nothing in this will, nor in the facts surrounding it, which prevents or in the least impedes the "presently ascertainable" value of these charitable bequests. The whole proposition presented is that because the word "pleasure" is used in the will that this means that the life beneficiary has the right to do anything she chooses that was for her pleasure. This ignores the fact that this testator used this word in connection with her comfort and welfare, and certainly did not mean that these conservative and sound executors would allow this estate dissipated at the mere whim of the life beneficiary. If you can ascertain by the past the standard of living of a person his or her comfort and welfare you necessarily can ascertain the expected pleasures of a woman eighty-five years of age. In short, the language of this will does not justify the position taken by the petitioner, which ignores the circumstances of the life beneficiary and the amount of the estate.

If we understand the argument in the brief of the petitioner, it is that before you can look into the surrounding circumstances you have to first ascertain a fixed standard solely from the will itself. This argument, we submit is not sound. In order to ascertain the so-called fixed standard it is necessary to examine into the extraneous facts and every case where a right of invasion is involved necessarily involves an investigation of readily ascertainable facts in order to arrive at any standard. In the present case this standard is governed by the language

of the will, by the character, habits and age of the life beneficiary and the entire situation is controlled by the sound discretion of reliable executors and trustees. The testator knew of this and any reasonable person would come to exactly the conclusion reached by the Court of Appeals after an investigation of the facts. With this situation the word "pleasure" does not inject an element of uncertainty into the situation, nor does it render the ascertainment of the value of the charitable bequests mere guess work. If the standard of comfort and welfare can be reasonably ascertained, "the pleasure" as used in this particular will is just as easily ascertained.

There are apparently two theories presented in the instant case and this Court is, therefore, called on to determine which shall prevail, and to lay down the proper and reasonable rule to be used in testing whether a charitable bequest may be deducted where the trustees are given the right of invasion within their discretion for certain specific purposes and the corpus of the estate is then left to certain specific beneficiaries, with a residuary clause to charities on the termination of the trust. The respondents submit that the real test is laid down in this case by the Court of Appeals where it says:

> "If the Court (Trial Court) should find that at the time of the testator's death there was never more than a bare possibility, i. e. a possibility so remote as to be negligible that the charitable bequests would fail, judgment for appellants would follow."

The exact terms of the will are of importance, but they are not absolutely controlling. The real test is whether under the will and all the facts and circumstances the charities are actually going to receive the bequest, and

that the possibility of an invasion of the corpus of the estate under the terms of the will is so negligible as to be nil.

The theory of the petitioner is that unless there is a fixed standard set up by the will itself then the facts surrounding the testator, the trustees and the beneficiaries can not be examined and that such facts are immaterial. In other words the charitable bequest cannot be deducted even if it is plainly and clearly shown that the possibility of an invasion of the corpus is so remote as to be nil. The Treasury Regulation in this connection merely provides that the charitable interest must be "presently ascertainable" and does not limit the method of arriving at the value of this interest.

The petitioner's brief and some of the cases that are cited therein read into this regulation the proposition that the will itself, regardless of facts and circumstances, must set up a fixed standard.

The respondents take exactly the opposite position. Congress in allowing these charitable deduction intended to encourage them. We recognize that the burden is on the taxpayer to establish all the facts and circumstances necessary to show that there is only a bare possibility of an invasion, but when this is done the real intent of Congress to allow such deductions is carried out. To rule out of consideration all of the facts and circumstances and to set up the absolute technical rule that the will alone governs is to ignore the purpose of the statute and the intent of Congress.

No real reason has been given in any of the cases cited in the petitioner's brief or in the petition itself why the

deductions should not be allowed if the facts really show that at the time of the testator's death the possibility of an invasion of the corpus was nil. The Merchants Bank case does not lay down a rule contrary to this contention. The petitioner's brief makes this claim and some of the Courts of Appeals have construed this case to mean that no facts can be considered unless the will itself sets up a fixed standared.

Your respondents ask this Court to affirm the opinion of the Court of Appeals of the Sixth Circuit and affirm the test laid down in this case by the Court of Appeals. This test is based on common sense and sound reasoning, while the test contended for by the petitioner is technical and produces results not intended by Congress. The case of

Commissioner v. Robertson, 141 Fed. (2d) 855,

was confronted with exactly this situation and after carefully examining both the Ithaca Trust case and the Merchants Bank case the Court lays down substantially the same test as set out in the opinion of the Court of Appeals in the instant case. The Court says:

> "Notwithstanding this decision, we think that the conclusions of the Tax Court in the pending case, resting as they do upon a finding of facts, must be affirmed. The respect to be given to such findings of the Tax Court, as well as the weight to be attached to its decisions on points of law, were emphasized in Dobson v. Commissioner, 320 U. S. 489, (44-1 USTC, Paragraph 9193), wherein it was said (p. 494) that 'courts, including this Court, have not paid the scrupulous deference to the tax laws' admonitions of finality, which they have to similar provisions in statutes relating to other tribunals.' We find ourselves unable to say that there is no sub-

stantial evidence here to support the finding of the Tax Court that 'the possibility that the charitable bequests would fail or be diminished was so remote as to be nil.' The frugal manner of life to which by choice the elderly couple for a long time had been accustomed, the substantial savings they had made from the wife's income in the seven year period preceding the death of the decedent, the increased savings from the wife's increased income in the three year period subsequent to the decedent's death, the profound interest of husband and wife in religious and charitable enterprise and the intimate acquaintance of the trustee with their manner of life, their wishes and their financial situation made it as certain as anything can be that the charitable bequests will never be reduced by any action on the part of the trustee or the life beneficiary under the will. At the time of the decendent's death 'there was no uncertainty as to the amount of the legacies appreciably greater than the general uncertainty that attends human affairs.' Ithaca Trust Co. v. U. S. 279 U. S. 151, (1 USTC, Paragraph 386). To hold otherwise would not only invade the province of the Tax Court but frustrate the obvious intent of Congress to encourage charitable bequests by allowing corresponding deductions from the taxable estate."

We do not deem it necessary to go into the facts and circumstances of the other cases cited by the Court of Appeals for the Sixth Circuit. There are two of them, however, to-wit:

Commissioner v. Upjohn's Estate, 124 Fed. (2d) 73.
Commissioner v. Boufils Trust, 115 Fed (2d) 788,

which are directly in point and we cite them to this Court as sustaining our position. The only answer to these cases in the petitioner's brief is that they were decided before the Merchants Bank case. Our answer to this is that the

time of the decision is not important. If the test laid down in those cases is sound then it should be followed.

DISCRETION OF TRUSTEES.

The brief of the petitioner seems to go on the theory that the executors and trustees have unlimited power of invasion and that no one can question their discretion. The will itself vests in the trustees the right to invade the estate for certain purposes "within their discretion." We have heretofore discussed the general purposes of the will; but we wish now to call the Court's attention to the authorities governing the discretion of a trustee to invade the corpus of an estate.

A number of Tennessee cases have been cited in a foot note to the petitioner's brief, but the brief fails to call attention to the fact that where any action is left to the discretion of the trustee that discretion must be exercised honestly and faithfully. The will in the present case created a trust for the life beneficiary, but likewise these trustees hold the corpus of the estate for the benefit of certain specific legatees and with a residuary clause for named charities.

Perry on Trustee and Trustees, Seventh Edition, Section 539

has laid down the law with reference to the powers and duties of a trustee who acts between the life beneficiary and the remaindermen. Section 539 says:

> "Where property is settled upon a trustee to hold in trust for one person for life, and the remainder over for some other person or persons, it is the duty of the trustee to consult the interest of both the tenant for life and the remainderman. The trustee must act impartially, and not give either an advan-

tage at the expense, or to the prejudice, of the other. The principal of the trust fund must not be converted to the use of the life cestui. (But the court may authorize the trustee to encroach upon the principal for the support of the cestuis if unforseen circumstances have swept away so much of the principal that the income is insufficient for the purpose, even if there is an express provision that no part of the principal should be paid to them.) A court of equity can correct any mismanagement between the trustee and either the tenant for life or the remainderman; it has even set aside a decree obtained by collusion between the trustee and tenant for life. The court will not allow property to be sold if the interests of remaindermen, known or unknown, would be thereby imperiled. And when the remainder takes effect, equity will compel the trustee to fulfill his last duty to the remaindermen by turning over the property to them."

The foregoing rule, when coupled with the general rule that all trustees are required to exercise care, diligence and skill plainly puts a very clear-cut limitation on the rights of the trustees to invade the corpus of this estate for the benefit of the life beneficiary. See

Perry on Trusts, Seventh Edition, Sec. 511; 54 *Am. Jurisprudence* 255., *Sec.* 321 *on Trusts.*

This rule particularly applies where there are successive beneficiaries, such as a life beneficiary and remaindermen. The rule is so well established that we merely cite the Court to the following cases:

American Law Institute, Restatement of Law on Law on Trusts, Vol. 2, Sec. 232.

Rhode Island Trust Company v. Tucker, 52 R. I. 277, 160 Atlantic 465, 83 A. L. R. 1253-1259.

Adams v. Cowen, 177 U. S. 471, 44 Law Ed. 851

We, therefore, submit that with this rule in mind there is no power of revocation granted the trustees, nor is there any power of invasion which would in anywise endanger the charities receiving these bequests. Inasmuch as the power of invasion rests in the discretion of the trustees, it is manifest, under the above rules of law, that this discretion must be exercised in a reasonable manner and in light of the readily ascertainable and reliably predictable facts. In exercising this discretion the trustees could not ignore the affluent circumstances of the testator's mother, nor the rights of the remaindermen.

In conclusion, we, therefore, submit to this Court that the test laid down by the Court of Appeals for the Sixth Circuit in the instant case is the proper rule to be followed in determining whether these bequests are deductible, and we, therefore, ask the Court to affirm the judgment of the Court of Appeals, reversing the District Court and send the case back to be tried.

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